COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No.: 35/LM/Jul03

In the larger merger between:

Aquarius platinum (South Africa) (Proprietary) Limited /
Rustenburg Platinum Mines Limited

and

Aquarius Platinum (South Africa) (Proprietary) Limited /
Rustenburg Platinum Mines Limited

Reasons for decision

Approval

1. On 03 September 2003 we issued a Merger Clearance Certificate approving unconditionally the merger between the abovementioned parties. Our reasons for the decision follow.

The merger transaction

2. In terms of this transaction Rustenburg Platinum Mines Limited, a wholly owned subsidiary of Anglo Platinum[1], proposes to merge with Aquarius Platinum (SA) (Pty) Ltd **("AQPSA")**, a South African subsidiary of Aquarius Platinum Limited (listed in Australia and the United Kingdom).

3. Aquarius is primarily involved in Platinum Group Metals **("PGMs")** mining and concentration in South Africa and Zimbabwe.

4. The parties to this transaction, which are both the acquiring and target firms, intend acquiring joint control over each other's assets. Both the merging parties have entered into the Sale Agreement ("the Waterval Sale Agreement"), and a Pooling and Sharing Arrangement **("P&SA")** comprising two legs to the transaction. Firstly, RPM will acquire joint control over AQPSA's Kroondal mine and Platinum Group Metals ("PGM") mineral rights. Secondly, AQPSA will acquire joint control over the PGM mineral rights of the adjacent RPM area.

5. Insofar as the first leg as envisaged in the P&SA is concerned, the Commission and the parties submit that Impala Refining Services Limited ("Impala") is the current refiner of the Kroondal concentrate. It is further

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[1] Anglo Platinum is the world's leading producer of PGMs and is listed on both the JSE Securities Exchange and the London Stock Exchange. In addition to RPM, Anglo Platinum's other subsidiaries include Potgietersrus Platinums Limited and Lebowa Platinum Mines Limited.

indicated that a pre-determined quantity will, post-merger, be supplied to Impala[2]. The parties indicated that the mineral rights, with respect to the ore, currently belong to RPM. This relates more particularly to the second leg of the transaction. In addition, the transaction allows the parties to supplement the existing infrastructure at Kroondal in order to produce PGMs on the adjacent RPM area.

6. In terms of the Waterval Sales Agreement[3], RPM acquires part of AQPSA's business, namely the surface and mineral rights in the Hex River Block[4].

7. The parties indicated that they wish to pool and share the costs and benefits of mining and concentrating PGM in their respective assets, in particular their mineral rights and their respective mining authorisations[5].

Rationale for the transaction

8. The parties submit that AQPSA possesses competence and skills in the field of PGM mining and production, engineering and management. RPM wishes to increase its volume of PGM concentrate production, and, for this purpose, it also requires an additional plant. Accordingly RPM needs to develop its plant and mining infrastructure.

9. According to the parties the P&SA will lead to efficiency gains for RPM and an increased lifespan for Kroondal mine[6], thus securing existing jobs and creating approximately 1100 new jobs. The parties aver that for RPM this is far more cost-effective than developing separate mining infrastructure to mine its minerals. It is through this transaction that RPM gains immediate access to the UG2 reef. It is the parties' further submission that there are obvious financial benefits resulting from such joint development since the parties will share the cost of development on a 50/50 basis.

10. The parties aver that although the mineral rights of the Hex River Block are currently viable as a stand-alone operation, the infrastructure necessary to mine this area will be contributed to the P&SA. According to the parties, AQPSA will not have the capacity required to mine the ore from the Hex River Block.

11. Furthermore, the Waterval Sale will add to RPM's existing Waterval Mine resources leading to a longer life of the mine and/or an increased production rate.

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[2] According to the Commission, the rest will be supplied to RPM, but firstly it would not have been extracted pre-merger due to an unavoidable discontinuity program, and secondly, it will only entail approximately half a year's PGM supply in terms of Kroondal's expanded production.

[3] It should be noted that the Waterval Sale Agreement falls outside the scope of the pooling and sharing agreement.

[4] The parties submit that the expected annual production of platinum from these reserves constitute about 0.5% of the global market for 2002.

[5] Refer to page 7 of the parties' Competitiveness Report in respect of this merger.

[6] The parties estimate that the Kroondal mine's life is extended from 2008 to 2016.

12. Generally, the transaction will further Anglo platinum's expansion strategy of pursuing the accelerated development of its mineral resources and reach its targeted 3,5 million ounces of platinum production by the end of 2006[7].

Activities of the parties

Anglo Platinum

13. Anglo Platinum is currently the world's leading producer of PGMs and is listed on both the JSE Securities Exchange and the London Stock Exchange. It is also represented on the Brussels Bourse by means of International Depository Receipts. As indicated above RPM is a wholly owned subsidiary of Anglo Platinum.

14. Anglo Platinum's primary operations comprise six mines, a smelting complex, a base metals refinery and a precious metals refinery. These operations are situated in the Limpopo, Northwest and Mpumalanga provinces of South Africa. Refining services for all of Anglo Platinum's mines and joint ventures are carried out by Precious Metals Refiners ("PMR"), a division of RPM[8].

AQPSA

15. As noted above AQPSA does PGM mining and concentration in South Africa and Zimbabwe. AQPSA has, over and above the Kroondal operation which is located in the Bushveld Complex in the Northwest Province, three other operations/projects in Southern Africa, which are Marikana[9], Everest South[10] and ZCE Platinum/Mimosa[11].

16. The Commission indicated in its report that the Hex River Block is currently owned, but not yet exploited, by AQPSA though not mentioned as a current project[12]. It further alluded to the fact that when owned by RPM, all mining, concentration and beneficiation will be carried out by RPM.

Relevant market

17. We have previously noted [13] that platinum group metals – PGMs – comprise platinum, palladium, rhodium, ruthenium, iridium and osmium.

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[7] See page 6 of the parties' Competitiveness Report with regard to this transaction.
[8] The parties submitted that no refining is currently carried out for any third party.
[9] Mining at Marikana commenced in June 2002, and is located 8 kilometres west of Kroondal.
[10] According to the parties this is located in the Bushveld Complex in Mpumalanga. This project is still in its infancy, and a feasibility study has yielded positive results thereof.
[11] This is a joint venture situated on the southern portion of the Great Dyke in Zimbabwe. The Great Dyke being one of the world's most significant ore bodies after the Bushveld Complex in South Africa.
[12] See the Commission's Merger and Acquisitions Report, page 7.
[13] Refer to paragraphs 9 and 10 in *Two Rivers Platinum and Assmang Limited* (Case No. 54/LM/Sep01); and *Pandora Joint Venture and Rustenburg Platinum Mines Ltd* (Case No. 55/LM/Aug02) respectively.

The properties of this group of metals are such that substitution of PGMs with metals outside of this group is not commercially or technically viable over an important range of uses. There is a certain degree of substitutability *between* the members of the PGM. However, the European Commission Report on the proposed merger of the platinum interests of Gencor (i.e. Implats) and Lonrho (i.e. LPD) (henceforth 'the Genco-Lonrho report) found that PGMs do not constitute a single relevant market but rather six relevant market each comprising the various members of the platinum group of metals[14]. Although subsequent developments may indicate a greater degree of substitutability between platinum and palladium in the manufacture of auto-catalysts than that suggested in the EC report, we are again, for the purposes of the instant transaction, of the view that the relevant markets identified by the European Commission remain valid today.

18. Although the range of PGMs is implicated in this transaction we will – by and large – restrict our comments to platinum itself[15]. It is here that the parties to the instant transaction – RPM and AQPSA are most active - indeed South African PGM ores are particularly richly endowed in platinum. Hence, of the six relevant markets identified above, it is the platinum market that is particularly implicated by this transaction.

19. As indicated above, there is a degree of substitutability within the PGM range of metals. For example, both platinum and palladium are extensively used in the manufacture of autocatalysts, an important market for PGMs, although this substitutability does not extend to other important markets, for example jewellery. We repeat then the six relevant product markets correspond to the members of the PGM and our analysis will focus on one of these – the market for platinum.

20. On the basis of the above findings, we conclude that the geographic market in the platinum industry is global. We, however, refrain from going further on the 'relevant market issue' as there is no reason to depart from *our previous decisions* in the platinum industry broadly which deals fully with this aspect.

Impact on competition

21. We have previously considered transactions of this nature, and we conclude as follows.

[14] See European Commission Decision of the 24 April 1996 declaring a concentration to be incompatible with the common market and the functioning of the EEA Agreement (Case No IV/M.619 – Gencor/Lonrho). Note that we shall refer to this Report at other points in this decision. The EC Report is particularly apposite because both analysis deals with the same geographical market populated by the same participants.

[15] The parties pointed out that in 2001 the autocatalyst demand sector accounted for approximately 40% of platinum demand and 71% of palladium demand. They remarked further that there is demand substitutability between platinum and palladium in the chemical and electrical industries. For further information on demand refer to Platinum 2002 Interim Report and Platinum 2003 Report compiled by Johnson Matthey.

22. No negative impact on competition in the PGM industry is anticipated from this transaction. The transaction will lead to significant synergies and cost savings for the parties. It will result in making mining of the area more efficient, and extend the lifespan of the Kroondal mine.

23. As indicated above, RPM is active in the mining, concentration and refining of PGMs whilst AQPSA is involved in the mining and concentration of PGMs. An overlap of the parties' activities occurs with respect to the mining and concentration of the PGMs. The market in question is highly concentrated. We pointed out in *Pandora Joint Venture* that the two largest South African producers – Angloplats and Implats – stand astride the world market. The proposed transaction does not remove any existing competitor, nor does it have the effect of removing a potential independent competitor.

24. We note too that this transaction will enable the parties to the P&SA to exploit their respective PGM rights, but will not result in any change of control over the parties themselves except over a small portion of production. The impact on concentration is miniscule and does not raise concerns from a competitive perspective. Viewed in its entirety, the transaction does not lead to a concentration that will significantly alter market shares in the PGM industry[16].

25. Insofar as the vertical effects of the merger are concerned, the parties were adamant throughout that AQPSA would honour its existing concentrate off-take agreements with Impala Refining Services Limited[17]. Practically, all concentrate derived from the existing AQPSA plant will be delivered to Impala (as before), until the Impala obligation has been satisfied. Only thereafter will the concentrate produced by the venture from the existing AQPSA plant and the new RPM plant to be constructed, be delivered to RPM. It appears that this production will relate mainly to the RPM rights in any event, and thus the transaction will result in AQPSA sharing in such production. The parties further maintained that this transaction in no way binds AQPSA to sell the concentrate from its operations that do not form part of the P&SA to any party[18].

26. In addition, AQPSA has never refined platinum concentrate before. Naturally, in the absence of the acquisition, AQPSA's supply of PGMs could have accrued to any of the refineries – in particular – Implats, which currently refines the concentrate of all mines of AQPSA[19].

Public interest considerations

27. The parties estimated that the transaction would significantly extend the life of the Kroondal mine, which obviously secures job opportunities for a

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[16] The parties averred their post merger market shares to be 37,97% of total world supply of platinum.
[17] Refer to page 33 of the parties' Competitiveness Report.
[18] The parties indicated that the production of concentrate at Everest South would be available to the best bidder.
[19] Note that Implats is the refiner for AQPSA's Kroondal and Marikana operations.

longer period. In addition, it is estimated that the transaction will lead to the creation of approximately 1 100 new job opportunities.

Conclusion

28. No substantial lessening or prevention of competition is envisaged from this transaction. Public interest considerations, to the extent any have been raised relating to employment, also favour approval of the merger. As a result, we accordingly approve this transaction without any conditions.

________________ 13 October 2003

D. Lewis **DATE**

Concurring: N. Manoim, U. Bhoola

For the merging parties:	D Rudman, Werksmans Attorneys. L Morphet & V. Kooverjee, Deneys Reitz Inc.
For the Commission:	M Worsley assisted by Ms. O Strydom, Competition Commission